

CALIFORNIA COASTAL COMMISSION

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W8

Staff: SMR-SF
Staff Report: September 24, 2004
Hearing Date: October 13, 2004

FINDINGS FOR CEASE AND DESIST ORDER

CEASE AND DESIST ORDER: CCC-04-CD-12

RELATED VIOLATION FILES: V-4-02-032

PROPERTY LOCATION: The subject property is located adjacent to and south and west of the Santa Monica Mountains National Recreation Area, and east of 2210 Mar Vista Road, Los Angeles County (**Exhibit 1**).

DESCRIPTION OF PROPERTY: 40-acre parcel east of and adjacent to 2210 Mar Vista Road, Los Angeles County—APN 4461-001-005—now identified by L.A. County as APNs 4461-001-023, 4461-001-024, 4461-001-025 and 4461-001-026.

PROPERTY OWNER: Pacific Alliance Holdings, Inc. owns APNs 4461-001-023 and 4461-001-024

VIOLATION DESCRIPTION: Unpermitted subdivision of APN 4461-001-005 into four ten-acre parcels by Pacific Alliance Holdings, Inc., and Mr. Raymond Munro, President of Pacific Alliance Holdings, Inc. Pacific Alliance Holdings, Inc., currently owns two of the four ten-acre parcels (APNs 4461-001-023 and 4461-001-024).

SUBSTANTIVE FILE DOCUMENTS: Cease and Desist Order file No. CCC-04-CD-12
Background exhibits 1 through 16

CEQA STATUS: Exempt (CEQA Guidelines (CG) §§ 15060 (c)(3) and Categorically Exempt (CG §§ 15061(b)(2), 15037, 15038 and 15321)

I. SUMMARY

Staff recommends that the Commission issue a Cease and Desist Order as described below. The subject property is a 40-acre parcel (APN 4461-001-005) located adjacent to and south and west of the Santa Monica Mountains National Recreation Area, and east of 2210 Mar Vista Road, Los Angeles County. The unpermitted development consists of the unpermitted subdivision of APN 4461-001-005 into four ten-acre parcels by Pacific Alliance Holdings, Inc., (“Pacific Alliance”) and Mr. Raymond Munro, President of Pacific Alliance, the owner of the subject property. Pacific Alliance and Munro transferred one of the ten-acre parcels (APN 4461-001-026) to Serge Falesitch on or about December 18, 2001. Pacific Alliance and Munro transferred another ten-acre parcel (APN 4461-001-025) to Richard Wade Weber and Carena Weber on or about September 3, 2003. County records identify Pacific Alliance as owner of two ten-acre parcels identified by the County as APNs 4461-001-023 and 4461-001-024.

Pursuant to the California Coastal Act, Public Resources Code 31000 et seq., the subdivision of a property may not proceed unless the Coastal Commission finds that it is consistent with the resource protection policies of the Coastal Act and the Commission approves a coastal development permit (CDP) that imposes all necessary terms and conditions to mitigate the impacts of the development. However, the subdivision of APN 4461-001-005 into four ten-acre parcels was not authorized in a CDP, in violation of the Coastal Act.

In 2000, Pacific Alliance Holdings, Inc. and Munro acquired the subject property from T.J. Gaston Properties Ltd., a California Limited Partnership, in a Grant Deed that described the property as one 40-acre parcel. In February 2001 Munro requested Certificates of Compliance from Los Angeles County for subdivision of the parcel. Los Angeles County issued conditional Certificates of Compliance in June 2001 based on a February 24, 1972 grant deed that pre-dates the Coastal Act and that purports to describe the property as four separate parcels. The Commission staff has reviewed the February 24, 1972 grant deed and notes that it does not constitute a subdivision that complied with the state laws and/or local ordinances that were applicable at the time. Since the property was not legally subdivided prior to the effective date of the Coastal Act, any subdivision of the property is subject to the permit requirements of the Coastal Act.

The primary coastal resource that potentially would be impacted by future development on the site is environmentally sensitive habitat area (ESHA) consisting of chaparral vegetation, which covers almost the entire subject property except for an existing fire road. If four parcels were developed with residences within the ESHA instead of only the one legal parcel, this would increase the density and intensity of use on the site four-fold, and the impacts of grading and vegetation removal for creating building footprints and access roads, additional vegetation removal required to comply with Los Angeles County Fire Department fuel modification requirements, installation of water wells, storage tanks, and septic systems, and other development required for single-family home construction would be approximately four times greater than would otherwise occur if the property was developed as the legal single lot only. Accordingly, subdivision of the 40 acres into four lots is not consistent with the sensitive habitat protection policies of Section 30240 of the Coastal Act. Furthermore, any subdivision of the 40

acres is inconsistent with Section 30240 because it would create the potential for development of more than one residence, and therefore result in destruction of a larger area of ESHA.

The unpermitted subdivision of the subject property meets the definition of “development” set forth in Section 30106 of the Coastal Act. The development was undertaken without a coastal development permit, in violation of Public Resources Code 30600. Therefore, the Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act. Commission staff has referred this matter to the State Attorney General’s office for litigation against all of the property owners seeking overall resolution of violation. Commission staff is requesting issuance of the Cease and Desist Order to prevent further sales of the parcels still owned by Pacific Alliance. The Order will prevent transfer to parties who may not be aware that the ten-acre parcels were not legally subdivided and may not be developed legally. Additional property owners would also make the litigation more complex and expensive and make an order granting relief more complicated.

II. HEARING PROCEDURES

The procedures for a hearing on a proposed Cease and Desist Order are set forth in Section 13185 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 8.

For a Cease and Desist Order hearing, the Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any person, other than the violator or its representative. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR Section 13185 and 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of the Order.

III. MOTION

Staff recommends that the Commission adopt the following motion:

1.A. Motion

I move that the Commission issue Cease and Desist Order No. CCC-04-CD-12 pursuant to the staff recommendation.

1.B. Staff Recommendation of Approval

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

1.C. Resolution to Issue Cease and Desist Order

The Commission hereby issues Cease and Desist Order number CCC-04-CD-12, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit, in violation of the Coastal Act.

IV. PROPOSED FINDINGS

A. History of Violation

Commission enforcement staff received a report on April 4, 2002 of a potential Coastal Act violation regarding unpermitted grading on the subject property. A site visit and staff investigation confirmed that in addition to unpermitted grading of roads and building pads and the removal of major vegetation without a coastal development permit, the property owner had apparently subdivided the 40-acre property into four ten-acre lots without the required CDP.

In 2000, Pacific Alliance acquired the subject property from T.J. Gaston Properties Ltd., a California Limited Partnership, in a Grant Deed that described the property as one 40-acre parcel (**Exhibit 2**). In February 2001 Mr. Raymond Munro, President of Pacific Alliance Holdings, Inc., requested Certificates of Compliance from Los Angeles County for subdivision of the parcel. Los Angeles County issued conditional Certificates of Compliance in June 2001 based on a February 24, 1972 grant deed that pre-dates the Coastal Act and that purports to describe the property as four separate parcels (**Exhibit 3**). The conditional Certificates of Compliance (“COCs”) issued by the County are attached as **Exhibit 4**. The County issued Clearance of Conditions indicating that the conditions of the COCs were met and these documents were recorded on August 9, 2002 (**Exhibit 5**). Subsequently, Pacific Alliance and Munro transferred one of the lots (APN 4461-001-026) to Serge Falesitch on or about December 18, 2001. Pacific Alliance and Munro transferred another lot (APN 4461-001-025) to Richard Wade Weber and Carena Weber on or about September 3, 2003. County records identify Pacific Alliance as owner of the parcels identified as APNs 4461-001-023 and 4461-001-024.

The Commission staff has reviewed the February 24, 1972 grant deed and it does not constitute a subdivision that complied with the state laws and/or local ordinances that were applicable at the time for a number of reasons as discussed below. Since the property was not legally subdivided prior to the effective date of the Coastal Act, any subdivision of the property is subject to the permit requirements of the Coastal Act. First, the purported subdivision in 1972 did not comply with the requirements of Los Angeles County Ordinance 9404 (**attached as Exhibit 6**), in effect at the time. Section 302 of the ordinance required issuance of either a parcel map or a Certificate of Exception by the County to authorize a Minor Land Division, defined in Section 21, p.2, as a land division creating four or fewer parcels. Under this ordinance, a Plot Plan Map was required to obtain a Certificate of Exception. (See Ordinance Section 16.7, p.1). Los Angeles County located in its files a "Plot Plan Map" dated January 1972 for division of the 40-acres into four parcels (**Exhibit 7**), but this map was never approved and a Certificate of Exception was never issued. Also, the parcel configuration shown on this Plot Plan Map is entirely different from the parcels recognized in the Certificates of Compliance and described in the 1972 Grant Deed. Second, irrespective of the failure to comply with the County ordinance, the 1972 Grant Deed did not convey any portion of the 40 acres to a different owner, and therefore did not constitute a "subdivision" of property. Furthermore, when Pacific Alliance Holdings acquired the property in 2000 from T.J. Gaston Properties, it was described as one 40-acre parcel. When the property in the estate of Thelma J. Gaston was assigned to T.J. Gaston Properties, Ltd. in 1987, this property was also described as one parcel. Excerpts from documents recorded in 1987 regarding the transfer from Thelma J. Gaston to Gaston Properties Ltd. are attached as **Exhibit 8**.

In a recent meeting with Commission staff, Los Angeles County staff confirmed that the County determined that the lots were not legally subdivided prior to the enactment of the Coastal Act. County staff indicated that the statement on the conditional COCs indicating that the lots were exempt from the State Subdivision Map Act and the County Subdivision Ordinance at the time of their creation is incorrect. In fact, the County Subdivision Ordinance did apply to the subdivision, as explained above. On September 9, 2004 Commission staff sent the County a letter confirming this and asking them to record corrected COCs (**Exhibit 9**).

Commission staff formally notified Mr. Munro in letters dated April 9, 2002 and May 31, 2002 that he was in violation of the Coastal Act regarding the unpermitted grading and vegetation removal on the subject property, and that a CDP was also required for any subdivision of the 40-acre lot (APN 4461-001-005) into four ten-acre lots. These letters are attached as **Exhibit 10**. Munro submitted a CDP application (No. 4-02-142) on June 10, 2002, seeking authorization for subdivision of APN 4461-001-005 (the 40-acre lot) into four parcels. The application was never completed and was returned to Munro on October 10, 2002 (return cover letter is attached as **Exhibit 11**). In December 2002, the Commission issued Restoration Order CCC-02-RO-02 regarding the unpermitted grading and vegetation removal, and ordered restoration of the site. The Restoration Order did not address the subdivision issue in 2002 because staff was still gathering information and it was critical to proceed immediately with an order for restoration and revegetation before the rainy season started, in order to minimize continuing resource damage caused by erosion on the steep slopes of the property. The restoration work, including restorative grading as well as reseeded of native vegetation, was completed in April 2003 and Commission staff will continue monitoring Munro's compliance with the long-term monitoring and maintenance requirements of the Restoration Order for a period of five years.

In a telephone conversation on June 13, 2002, Commission staff informed Mr. Munro that the conditional Certificates of Compliance did not create legally subdivided lots under the Coastal Act, that he should not sell or transfer any of the lots, and that he needed to resolve the issue of the unpermitted subdivision. Despite this instruction, public records indicate that Mr. Munro and Pacific Alliance sold or transferred one of the lots to the Webers in September 2003. Mr. Munro also failed to inform Commission staff that he had already sold or transferred another one of the lots to Falesitch in 2001. Commission enforcement staff was again alerted to the ongoing matter regarding the illegal subdivision after Weber, the new owner of the ten-acre parcel identified as 4461-001-025, submitted a CDP application to the Commission's South Central Coast district office in Ventura in May 2004.

In a letter dated July 15, 2004, Commission enforcement staff notified Munro of the potential for recordation of a Notice of Violation against the two remaining parcels that he owns, and again instructed Mr. Munro not to sell or transfer either of the ten-acre lots, unless and until the Coastal Act violation regarding the unpermitted subdivision has been remedied (**Exhibit 12**). Staff also informed Mr. Munro that the Commission would be pursuing legal remedies to resolve this matter. Regarding the Notice of Violation, Section 30812 of the Coastal Act provides that if the Commission determines, based on substantial evidence, that a violation has occurred on the subject property, a Notice of Violation can be recorded against the subject property to provide notice to any potential purchasers regarding the presence of the violation.

On August 12, 2004, the Commission sent a Notice of Intent (NOI) to record a notice of violation of the Coastal Act and to commence cease and desist order proceedings against Mr. Munro (**Exhibit 13**). The NOI informed Pacific Alliance and Munro that staff was scheduling the matter for hearing at the Commission's October meeting. As of September 1, 2004, the Commission had not received a written objection to the recordation of the Notice of Violation. Staff transmitted the Notice of Violation to Los Angeles County on September 2, 2004, for recordation as provided for under Section 30812 of the Coastal Act (**Exhibit 14**). As of the September 1, 2004 deadline, the Commission had also not received a Statement of Defense from Pacific Alliance and Munro regarding the alleged violation.

Munro telephoned staff on September 21, 2002, and said he had retained counsel and wanted to request a postponement of the hearing from October until November. Staff received a written postponement request from Pacific Alliance and Munro on September 22, 2004 (**Exhibit 15**). In a letter dated September 22, 2004, staff denied the postponement request (**Exhibit 16**). The request was denied because Pacific Alliance and Munro have had ample opportunity to obtain counsel at an earlier date. Commission staff informed Pacific Alliance and Munro of the unpermitted subdivision more than two years ago (in letters dated April and May 2002). Commission staff informed Pacific Alliance and Munro in a letter dated July 15, 2004 that, since they had failed to resolve this matter, the Commission intended to pursue legal remedies. In a Notice of Intent (NOI) letter dated August 12, 2004, staff informed Pacific Alliance and Munro that staff intended to schedule a hearing on a request for a Cease and Desist Order at the Coastal Commission's October 2004 hearing, and that staff had referred the matter to the State Attorney General's office. In addition, as discussed below, there is a need for the Order to be issued as soon as possible.

Commission staff referred this matter to the State Attorney General's office in early August 2004 for litigation against all of the property owners seeking overall resolution of violation. CCC staff is also requesting issuance of the Cease and Desist Order to prevent further sales of the parcels. This will insure that Pacific Alliance and Munro do not transfer the other two ten-acre parcels to new owners before there is a court decision on the Commission's claim that the attempted subdivision was illegal and a determination of the appropriate remedy. The Order will prevent transfer to parties who may not be aware that the ten-acre parcels were not legally subdivided and may not be developed legally. Additional property owners would also make the litigation more complex and expensive and make an order granting relief more complicated.

B. Description of Unpermitted Development

The unpermitted development, which is the subject of this Cease and Desist Order, consists of the unpermitted subdivision of APN 4461-001-005 into four ten-acre parcels by Pacific Alliance and Mr. Raymond Munro, President of Pacific Alliance.

C. Basis for Issuance of Cease and Desist Order

The statutory authority for issuance of this Cease and Desist Order is provided in Section 30810 of the Coastal Act, which states, in relevant part:

- (a) If the Commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that 1) requires a permit from the commission without first securing the permit or 2) is inconsistent with any permit previously issued by the Commission, the Commission may issue an order directing that person...to cease and desist.*
- (b) The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division.*

The subdivision of the subject property meets the definition of "development" set forth in Section 30106 of the Coastal Act:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use... (emphasis added)

The development was undertaken without a coastal development permit, in violation of Public Resources Code 30600. Therefore, the Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act.

D. Inconsistency with Chapter 3 of the Coastal Act

As discussed above, the Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act solely based on the unpermitted development on the subject property. A showing of inconsistency with Chapter 3 of the Coastal Act is not required for Orders to be issued under Section 30810, but we provide the following information for background purposes.

Environmentally Sensitive Habitat Areas

Section 30107.5 of the Coastal Act states:

“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

The subject property is a 40-acre parcel located adjacent to and south and west of the Santa Monica Mountains National Recreation Area. The subject property is located almost entirely within a designated Wildlife Migration Corridor and partially within the Solstice Canyon Significant Watershed Area, as designated in the certified Malibu/Santa Monica Mountains Land Use Plan. Wildlife Migration Corridors and Significant Watershed Areas are both designated as Environmentally Sensitive Habitat Area (ESHA) under the Land Use Plan. In addition, the chaparral vegetation that covers the subject property is ESHA. Except for Mar Vista Ridge Road, an existing fire road that runs through the subject property in an east-west direction and roughly bisects it, and a small segment of fire road at the northeastern corner of the property, the entire site is covered with chaparral.

Development of homes has not yet occurred on the subject property. The five-acre area where unpermitted grading and vegetation removal previously occurred is in the process of being restored to its former condition according to the terms of the Commission’s 2002 Restoration Order. Commission staff is monitoring and evaluating the success of the restoration effort, which has the primary goals of erosion control, restorative grading and restoration of native vegetation.

The primary coastal resource that potentially would be impacted by future development on the site is ESHA consisting of chaparral vegetation, which covers almost the entire subject property

except for an existing fire road. If four lots were developed with residences within the ESHA instead of only the one legal parcel, this would increase the density and intensity of use on the site four-fold, and the impacts of grading and vegetation removal for creating building footprints and access roads, additional vegetation removal required to comply with Los Angeles County Fire Department fuel modification requirements, installation of water wells, storage tanks, and septic systems, and other development required for single-family home construction would be approximately four times greater than would otherwise occur if the property was developed as the legal single lot only.

Accordingly, subdivision of the 40 acres into four lots is not consistent with the sensitive habitat protection policies of Section 30240 of the Coastal Act. Furthermore, any subdivision of the 40 acres is inconsistent with Section 30240 because it would create the potential for development of more than one residence, and therefore result in destruction of a larger area of ESHA. The area of ESHA habitat affected by the development of each residence would be approximately 3 acres, due to construction of buildings, septic system, driveway and fire truck turnaround, and substantial removal of native vegetation surrounding structures that is necessary for fire safety.

Location; existing developed area

Section 30250 of the Coastal Act states, in relevant part:

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

If four lots were developed on the site instead of only the one legal parcel, the density and intensity of use on the site would be approximately four times greater than would otherwise occur if the property were developed as the legal single lot only. The intensified use would create additional demands on public services, such as water, electricity and roads. Impacts from grading and vegetation removal required to comply with Los Angeles County Fire Department fuel modification requirements, installation of water wells, storage tanks, and septic systems, and other development required for single-family home construction would be approximately four times greater than would otherwise occur if the property was developed as a single lot only. Therefore, subdivision of the 40 acres into four ten-acre parcels is not consistent with Section 30250 of the Coastal Act regarding the cumulative impacts of new development on coastal resources.

Biological productivity and water quality

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

New development on the subject property, which is located in the Santa Monica Mountains, has the potential to adversely impact coastal water quality through the removal of native vegetation, increase in impervious surfaces, increase in runoff, erosion, and sedimentation, and introduction of pollutants such as petroleum, cleaning products, pesticides and fertilizers, as well as effluent from septic systems. Soils on the property are classified as Millsholm loam and are highly susceptible to erosion and may contribute directly to the degradation of water quality in the surrounding coastal waters and streams through increased sediment input. If four lots were developed with residences instead of only the one legal parcel, the potential impacts to water quality from the site would be approximately four times greater than would otherwise occur if the property were developed as the legal single lot only. Therefore, subdivision of the 40 acres into four ten-acre parcels is not consistent with Section 30231 of the Coastal Act regarding the protection of coastal resources from impacts to water quality and biological productivity.

E. California Environmental Quality Act (CEQA)

The Commission finds that issuance of a cease and desist order to compel resolution of the Coastal Act violation on the subject property is exempt from any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Cease and Desist Order is exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(3), 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines.

F. Determinations of Fact

1. Pacific Alliance Holdings, Inc. is the owner of two 10-acre parcels east of and adjacent to 2210 Mar Vista Road, Los Angeles County (APNs 4461-001-023 and 4461-001-024). Mr. Raymond Munro is President of Pacific Alliance Holdings, Inc. The subject property is located within designated ESHA, including a designated Wildlife Migration Corridor and partially within the Solstice Canyon Significant Watershed Area.
2. Unpermitted subdivision of APN 4461-001-005 into four ten-acre parcels (APNs 4461-001-023, 4461-001-024, 4461-001-025 and 4461-001-026) by Pacific Alliance and Mr. Raymond Munro has occurred.

3. Commission staff notified Mr. Munro beginning in April 2002 that the unpermitted subdivision had occurred without the required Coastal Development Permit, in violation of the Coastal Act.
4. No exemption from the permit requirements of the Coastal Act applies to the unpermitted development regarding the subject property.
5. The unpermitted development is inconsistent with Chapter 3 policies of the Coastal Act, including Sections 30240, 30250 and 30231.

G. Violators' Defenses and Commission's Response

As noted above, Respondents did not submit a Statement of Defense. Under the Commission's regulations, this was to be submitted within 20 days, or by September 1, 2004. The State legislature explicitly granted the Coastal Commission the right to "adopt or amend...rules and regulations to carry out the purposes and provisions of [the Coastal Act], and to govern procedures of the commission." (Pub. Res. Code § 30333.) Relying on such powers, the Coastal Commission promulgated Section 13181 entitled "Commencement of Cease and Desist Order Proceeding before the Commission," which became operative on September 3, 1992. (See Cal. Code of Regs., Title 14, § 13181, and historical comments thereto.) Subdivision (a) of Section 13181 provides in relevant part:

"If the executive director believes that the results of an enforcement investigation so warrant, he or she shall commence a cease and desist order proceeding before the commission by providing any person whom he or she believes to be engaging in development activity as described in Section 30810(a) of the Public Resources Code with notice of his or her intent to do so...The notice of intent shall be accompanied by a "statement of defense form" that conforms to the format attached to these regulations as Appendix A. The person(s) to whom such notice is given shall complete and return the statement of defense form to the Commission by the date specified therein, which date shall be no earlier than 20 days from transmittal of the notice of intent." (Cal. Code of Regs., title 14, § 13181, subd. (a); emphasis added.)

As of the date of this report, Pacific Alliance and Mr. Munro have not submitted the statement of defense form setting forth their response to staff's allegations as set forth in the August 12, 2004 Notice of Intent to Commence Cease and Desist Order Proceedings. The Notice of Intent established a deadline of September 1, 2004 for submittal of the statement of defense form. Furthermore, Pacific Alliance and Mr. Munro never requested an extension of the time limit for submittal of the statement of defense form. (See Cal. Code of Regs., title 14, § 13181, subd. (b) (where executive director "may at his or her discretion extend the time limit...upon receipt within the time limit of a written request for such extension and a written demonstration of good cause").) Since the completion of Section 13181's statement of defense form is mandatory, Pacific Alliance and Mr. Munro have failed to raise and preserve any defenses that they may have.

The defense form requirement serves an important function. (See, e.g., *Horack v. Franchise Tax Board* (1971) 18 Cal.App.3d 363, 368) ("Where administrative machinery exists for resolution of differences, such procedures must be "fully utilized and exhausted"). The Coastal Commission's

cease and desist hearings are “quasi-judicial.” Thus, if the Coastal Commission is to make findings of fact and conclusions at law in the form of an adopted Staff Report, Respondents must inform the Commission, precisely and in writing, which defenses they wish the Commission to consider. The statement of defense form has six categories of information that Pacific Alliance and Munro should have provided to the Coastal Commission: (1) facts or allegations contained in the cease and desist order or the notice of intent that are admitted by respondent; (2) facts or allegations contained in the cease and desist order or the notice of intent that are denied by respondent; (3) facts or allegations contained in the cease and desist order or the notice of intent of which the respondent has no personal knowledge; (4) facts and/or a description of any documents, photographs or other physical evidence that may exonerate the respondent; (5) any other information, statement, etc. that respondent desires to make; and (6) a listing of any documents, exhibits, declarations or other materials that are being attached by respondent to the statement of defense form.

The Commission should not be forced to guess which defenses Pacific Alliance and Mr. Munro want the Commission to consider and which defenses they may have raised informally prior to the hearing but now wish to abandon. Section 13181, subdivision (a) is specifically designed to serve this function of clarifying the issues to be considered and decided by the Commission. (See *Bohn v. Watson* (1954) 130 Cal.App.2d 24, 37 (“It was never contemplated that a party to an administrative hearing should withhold any defense then available to him or make only a perfunctory or ‘skeleton’ showing in the hearing...The rule compelling a party to present all legitimate issues before the administrative tribunal is required...to preserve the integrity of the proceedings before that body and to endow them with a dignity beyond that of a mere shadow-play”).)

Pacific Alliance and Mr. Munro have neither admitted nor contested staff’s allegations by submitting a completed statement of defense form as provided by the Commission’s regulations. However, Mr. Munro has previously contended in telephone conversations with Commission staff that Los Angeles County staff informed him that the issuance of conditional Certificates of Compliance and clearance of the attached conditions would create legally subdivided parcels.

The Commission has informed Mr. Munro that he cannot rely on incomplete or misleading information he may have received from Los Angeles County regarding the purported legality of the subdivision of the 40-acre parcel into four ten-acre parcels. Section 30600(a) of the Coastal Act states that, “in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person . . . wishing to perform or undertake any development in the coastal zone . . . shall obtain a coastal development permit.” Under California law, one public agency cannot by its actions prevent impair another independent public agency from exercising its legal jurisdiction. (*California Tahoe Regional Planning Agency v. Day and Night Electric, Inc.* (1985) 163 Cal.App.3d 898.) Thus, regardless of whether the County incorrectly informed Mr. Munro that the conditional COCs and clearance of the attached conditions would create legally subdivided parcels, Mr. Munro is responsible for complying with the Coastal Act requirements that apply to such subdivision. We note that Commission staff informed Mr. Munro of these facts and the need for a CDP in April 2002, before the sale to Weber and, indeed, before staff had been informed of any sale or transfer.

Additionally, in a recent meeting with Commission staff, Los Angeles County staff confirmed that the County has determined that the 40-acre parcel was not legally subdivided prior to the enactment of the Coastal Act. County staff indicated that the statement on the conditional COCs indicating that the lots were exempt from the State Subdivision Map Act and the County Subdivision Ordinance at the time of their creation is incorrect. On September 9, 2004 Commission staff sent the County a letter confirming this and requested they record corrected COCs to reflect that the subject property was not legally subdivided in compliance with the applicable provisions of the County Subdivision Ordinance at the time of their creation (**Exhibit 9**). See additional discussion regarding the illegal subdivision in Section IV.A, on pages 4-5 of this staff report. We also note that the County COCs do not state that the subdivision complies with the Coastal Act or is exempt from the Coastal Act permit requirements.

Staff recommends that the Commission issue the following Cease and Desist Order:

CEASE AND DESIST ORDER CCC-04-CD-12

Pursuant to its authority under Public Resource Code §30810, the California Coastal Commission hereby orders Pacific Alliance Holdings, Inc., Mr. Raymond Munro, President of Pacific Alliance Holdings, Inc., and their agents, contractors and employees, and any person acting in concert with any of the foregoing (hereinafter referred to as “Respondents”) to cease and desist from engaging in any further development on the subject property unless authorized pursuant to the Coastal Act.

Respondents are ordered to cease and desist from any further unpermitted development at the site, and insure compliance with the Coastal Act pursuant to Section 30810(b), including any attempts to subdivide the property without a CDP, transfer the property, or attempt to create or maintain illegal subdivision of either of the two ten-acre parcels they own or control (APNs 4461-001-023 and 4461-001-024), unless and until the action has been authorized in a CDP or a final court judgment.

I. Persons Subject to the Order

President of Pacific Alliance Holdings, Inc., and Raymond Munro, President of Pacific Alliance Holdings, Inc., and their agents, contractors and employees, and any persons acting in concert with any of the foregoing.

II. Identification of the Property

The property that is subject to the order is described as follows:

40-acre parcel east of and adjacent to 2210 Mar Vista Road, Los Angeles County, illegally subdivided into four ten-acre parcels (APNs 4461-001-023, 4461-001-024, 4461-001-025 and 4461-001-026). Respondents own or control two of the four ten-acre parcels (APNs 4461-001-023 and 4461-001-024).

III. Description of Unpermitted Development

The development that is the subject of the Cease and Desist Order consists of unpermitted subdivision of APN 4461-001-005 into four ten-acre parcels (APNs 4461-001-023, 4461-001-024, 4461-001-025 and 4461-001-026) by Pacific Alliance and Mr. Raymond Munro, President of Pacific Alliance Holdings, Inc.

IV. Effective Date and Terms of the Order

The effective date of the order is the date of its approval by the Commission. The orders shall remain in effect permanently unless and until modified or rescinded by the Commission.

V. Findings

The order is issued on the basis of the findings adopted by the Commission at the October 2004 hearing, as set forth in the attached document entitled "Findings for Cease and Desist Order".

VI. Compliance Obligation

Strict compliance with the order by all parties subject thereto is required. Failure to comply strictly with any term or condition of the order including any deadline contained in the order will constitute a violation of this order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists, in addition to any other penalties authorized under Section 30820.

VII. Deadlines

Deadlines may be extended by the Executive Director for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

VIII. Appeal

Pursuant to Public Resources Code Section 30803(b), any person or entity against whom the order is issued may file a petition with the Superior Court for a stay of this order.

Executed in _____ on _____, on behalf of the California Coastal Commission.

By: _____ Peter Douglas, Executive Director

Exhibits

1. Site Map and Location.
2. 2000 Grant Deed transferring the subject property to Raymond Munro and Pacific Alliance Holdings, Inc. and describing the subject property as one 40-acre parcel.
3. 1972 grant deed that pre-dates the Coastal Act and that purports to describe the subject property as four separate parcels.
4. Conditional Certificates of Compliance (“COCs”) for the subject property issued by Los Angeles County in 2001.
5. Clearance of Conditions documents recorded on August 9, 2002, indicating that the conditions of the COCs were met.
6. Los Angeles County Ordinance 9404.
7. “Plot Plan Map” dated January 1972.
8. Excerpts from documents recorded in 1987 regarding the transfer from Thelma J. Gaston to Gaston Properties Ltd.
9. Letter dated September 9, 2004 from Commission staff to Los Angeles County.
10. Letters dated April 9, 2002 and May 31, 2002 from Commission staff to Mr. Munro, notifying him that that he was in violation of the Coastal Act regarding the unpermitted grading and vegetation removal on the subject property, and that a CDP was also required for the unpermitted subdivision of the 40-acre lot (APN 4461-001-005) into four ten-acre lots.
11. Cover letter dated October 10, 2002 regarding returned CDP application.
12. Letter dated July 15, 2004, from Commission enforcement staff to Mr. Munro, notifying him of the potential for recordation of a Notice of Violation against the two remaining parcels that he owns, and again instructing Mr. Munro not to sell or transfer either of the ten-acre lots, unless and until the Coastal Act violation regarding the unpermitted subdivision has been remedied.
13. Notice of Intent (NOI) letter dated August 12, 2004 from Commission staff to Mr. Munro regarding recordation of a notice of violation of the Coastal Act and to commence cease and desist order proceedings against Mr. Munro.
14. Notice of Violation.
15. Postponement request dated September 22, 2004, from Pacific Alliance and Munro to Commission staff.
16. Commission response from Commission staff to Pacific Alliance and Munro regarding postponement request, dated September 22, 2004.